

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Prathima Price, Esq., SBN 321378
Dennis Price, Esq., SBN 279082
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

R & R LLC, a California Limited
Liability Company;
Full Service Carwash, Inc., a
California Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of R & R LLC, a California Limited Liability Company; Full Service Carwash, Inc., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant R & R LLC owned the real property located at or about 2345 S 7th St, San Jose, California, between January 2019 and July 2020.

1 3. Defendant R & R LLC owns the real property located at or about 2345
2 S 7th St, San Jose, California, currently.

3 4. Defendant Full Service Carwash, Inc. owned San Jose Touchless
4 Carwash located at or about 2345 S 7th St, San Jose, California, between
5 January 2019 and July 2020.

6 5. Defendant Full Service Carwash, Inc. owns San Jose Touchless Carwash
7 (“Carwash”) located at or about 2345 S 7th St, San Jose, California, currently.

8 6. Plaintiff does not know the true names of Defendants, their business
9 capacities, their ownership connection to the property and business, or their
10 relative responsibilities in causing the access violations herein complained of,
11 and alleges a joint venture and common enterprise by all such Defendants.
12 Plaintiff is informed and believes that each of the Defendants herein is
13 responsible in some capacity for the events herein alleged, or is a necessary
14 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
15 the true names, capacities, connections, and responsibilities of the Defendants
16 are ascertained.

17
18 **JURISDICTION & VENUE:**

19 7. The Court has subject matter jurisdiction over the action pursuant to 28
20 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
21 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22 8. Pursuant to supplemental jurisdiction, an attendant and related cause
23 of action, arising from the same nucleus of operative facts and arising out of
24 the same transactions, is also brought under California’s Unruh Civil Rights
25 Act, which act expressly incorporates the Americans with Disabilities Act.

26 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
27 founded on the fact that the real property which is the subject of this action is
28 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

10. Plaintiff went to the Carwash in January 2019, February 2019 and July 2020 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws.

11. The Carwash is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide wheelchair accessible parking in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. The Carwash provides parking to its customers but fails to provide wheelchair accessible parking.

14. One problem that plaintiff encountered is that there was no accessible parking whatsoever in the parking lot.

15. On information and belief the defendants currently fail to provide wheelchair accessible parking.

16. Additionally, on the dates of the plaintiff's visits, the defendants failed to provide wheelchair accessible sales counters in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

17. The Carwash provides sales counters to its customers but fails to provide wheelchair accessible sales counters.

18. A problem that plaintiff encountered was that the sales counter was too high and there was no lowered portion of the sales counter suitable for wheelchair users.

19. Plaintiff believes that there are other features of the sales counters that likely fail to comply with the ADA Standards and seeks to have fully compliant sales counters available for wheelchair users.

1 20. On information and belief the defendants currently fail to provide
2 wheelchair accessible sales counters.

3 21. Moreover, on the dates of the plaintiff's visits, the defendants failed to
4 provide wheelchair accessible restrooms in conformance with the ADA
5 Standards as it relates to wheelchair users like the plaintiff.

6 22. The Carwash provides restrooms to its customers but fails to provide
7 wheelchair accessible restrooms.

8 23. A few problems that plaintiff encountered is that the restroom doorway
9 and the toilet stall were too narrow for wheelchair users. Additionally, the
10 restroom mirror was too high. Moreover, there were no grab bars in the toilet
11 stall and the plumbing underneath the sink was not properly wrapped.

12 24. Plaintiff believes that there are other features of the restrooms that
13 likely fail to comply with the ADA Standards and seeks to have fully compliant
14 restrooms available for wheelchair users.

15 25. On information and belief the defendants currently fail to provide
16 wheelchair accessible restrooms.

17 26. On the dates of the plaintiff's visits, the defendants failed to provide
18 wheelchair accessible paths of travel in conformance with the ADA Standards
19 as it relates to wheelchair users like the plaintiff.

20 27. The Carwash provides paths of travel to its customers but fails to
21 provide wheelchair accessible paths of travel.

22 28. A few problems that plaintiff encountered is that there is an unramped
23 step at the entrance of the restroom. Meanwhile, the ramps that run up to the
24 entrances did not have a level landing.

25 29. Plaintiff believes that there are other features of the paths of travel that
26 likely fail to comply with the ADA Standards and seeks to have fully compliant
27 paths of travel available for wheelchair users.

28 30. On information and belief the defendants currently fail to provide

1 wheelchair accessible paths of travel.

2 31. Finally, on the dates of the plaintiff's visits, the defendants failed to
3 provide wheelchair accessible door hardware in conformance with the ADA
4 Standards as it relates to wheelchair users like the plaintiff.

5 32. The Carwash provides door hardware to its customers but fails to
6 provide wheelchair accessible door hardware.

7 33. The problem that plaintiff encountered is that the door hardware to the
8 sales counter had a pull bar style handle that required tight grasping to operate.

9 34. Plaintiff believes that there are other features of the door hardware that
10 likely fail to comply with the ADA Standards and seeks to have fully compliant
11 door hardware available for wheelchair users.

12 35. On information and belief the defendants currently fail to provide
13 wheelchair accessible door hardware.

14 36. These barriers relate to and impact the plaintiff's disability. Plaintiff
15 personally encountered these barriers.

16 37. As a wheelchair user, the plaintiff benefits from and is entitled to use
17 wheelchair accessible facilities. By failing to provide accessible facilities, the
18 defendants denied the plaintiff full and equal access.

19 38. The failure to provide accessible facilities created difficulty and
20 discomfort for the Plaintiff.

21 39. The defendants have failed to maintain in working and useable
22 conditions those features required to provide ready access to persons with
23 disabilities.

24 40. The barriers identified above are easily removed without much
25 difficulty or expense. They are the types of barriers identified by the
26 Department of Justice as presumably readily achievable to remove and, in fact,
27 these barriers are readily achievable to remove. Moreover, there are numerous
28 alternative accommodations that could be made to provide a greater level of

1 access if complete removal were not achievable.

2 41. Plaintiff will return to the Carwash to avail himself of its goods or
3 services and to determine compliance with the disability access laws once it is
4 represented to him that the Carwash and its facilities are accessible. Plaintiff
5 is currently deterred from doing so because of his knowledge of the existing
6 barriers and his uncertainty about the existence of yet other barriers on the
7 site. If the barriers are not removed, the plaintiff will face unlawful and
8 discriminatory barriers again.

9 42. Given the obvious and blatant nature of the barriers and violations
10 alleged herein, the plaintiff alleges, on information and belief, that there are
11 other violations and barriers on the site that relate to his disability. Plaintiff will
12 amend the complaint, to provide proper notice regarding the scope of this
13 lawsuit, once he conducts a site inspection. However, please be on notice that
14 the plaintiff seeks to have all barriers related to his disability remedied. See
15 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
16 encounters one barrier at a site, he can sue to have all barriers that relate to his
17 disability removed regardless of whether he personally encountered them).

18
19 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
20 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
21 Defendants.) (42 U.S.C. section 12101, et seq.)

22 43. Plaintiff re-pleads and incorporates by reference, as if fully set forth
23 again herein, the allegations contained in all prior paragraphs of this
24 complaint.

25 44. Under the ADA, it is an act of discrimination to fail to ensure that the
26 privileges, advantages, accommodations, facilities, goods and services of any
27 place of public accommodation is offered on a full and equal basis by anyone
28 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.

1 § 12182(a). Discrimination is defined, inter alia, as follows:

- 2 a. A failure to make reasonable modifications in policies, practices,
3 or procedures, when such modifications are necessary to afford
4 goods, services, facilities, privileges, advantages, or
5 accommodations to individuals with disabilities, unless the
6 accommodation would work a fundamental alteration of those
7 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 8 b. A failure to remove architectural barriers where such removal is
9 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
10 defined by reference to the ADA Standards.
- 11 c. A failure to make alterations in such a manner that, to the
12 maximum extent feasible, the altered portions of the facility are
13 readily accessible to and usable by individuals with disabilities,
14 including individuals who use wheelchairs or to ensure that, to the
15 maximum extent feasible, the path of travel to the altered area and
16 the bathrooms, telephones, and drinking fountains serving the
17 altered area, are readily accessible to and usable by individuals
18 with disabilities. 42 U.S.C. § 12183(a)(2).

19 45. When a business provides parking for its customers, it must provide
20 accessible parking.

21 46. Here, accessible parking has not been provided in conformance with the
22 ADA Standards.

23 47. When a business provides facilities such as sales or transaction counters,
24 it must provide accessible sales or transaction counters.

25 48. Here, accessible sales or transaction counters have not been provided in
26 conformance with the ADA Standards.

27 49. When a business provides facilities such as restrooms, it must provide
28 accessible restrooms.

1 50. Here, accessible restrooms have not been provided in conformance with
2 the ADA Standards.

3 51. When a business provides paths of travel, it must provide accessible path
4 of travel.

5 52. Here, accessible paths of travel have not been provided in conformance
6 with the ADA Standards.

7 53. When a business provides facilities such as door hardware, it must
8 provide accessible door hardware.

9 54. Here, accessible door hardware has not been provided in conformance
10 with the ADA Standards.

11 55. The Safe Harbor provisions of the 2010 Standards are not applicable
12 here because the conditions challenged in this lawsuit do not comply with the
13 1991 Standards.

14 56. A public accommodation must maintain in operable working condition
15 those features of its facilities and equipment that are required to be readily
16 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

17 57. Here, the failure to ensure that the accessible facilities were available
18 and ready to be used by the plaintiff is a violation of the law.

19
20 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
21 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
22 Code § 51-53.)

23 58. Plaintiff repleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
26 that persons with disabilities are entitled to full and equal accommodations,
27 advantages, facilities, privileges, or services in all business establishment of
28 every kind whatsoever within the jurisdiction of the State of California. Cal.

1 Civ. Code § 51(b).

2 59. The Unruh Act provides that a violation of the ADA is a violation of the
3 Unruh Act. Cal. Civ. Code, § 51(f).

4 60. Defendants' acts and omissions, as herein alleged, have violated the
5 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
6 rights to full and equal use of the accommodations, advantages, facilities,
7 privileges, or services offered.

8 61. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
9 discomfort or embarrassment for the plaintiff, the defendants are also each
10 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
11 (c).)

12 62. Although the plaintiff encountered frustration and difficulty by facing
13 discriminatory barriers, even manifesting itself with minor and fleeting
14 physical symptoms, the plaintiff does not value this very modest physical
15 personal injury greater than the amount of the statutory damages.

16
17 **PRAYER:**

18 Wherefore, Plaintiff prays that this Court award damages and provide
19 relief as follows:

20 1. For injunctive relief, compelling Defendants to comply with the
21 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
22 plaintiff is not invoking section 55 of the California Civil Code and is not
23 seeking injunctive relief under the Disabled Persons Act at all.

24 2. Damages under the Unruh Civil Rights Act, which provides for actual
25 damages and a statutory minimum of \$4,000 for each offense.

26 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
27 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.
28

1 Dated: October 13, 2020

CENTER FOR DISABILITY ACCESS

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3 By:



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5 Amanda Seabock, Esq.
Attorney for plaintiff